

MARQUIS AURBACH COFFING

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12 Attorneys for Plaintiffs

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JEREMY BAUMAN, individually and on behalf
16 of all persons similarly situated,

Case No.: A-14-702332-C
Dept. No.: XIV

17 vs.

18 Plaintiffs,

19 V THEATER GROUP, LLC; SAXE
20 MANAGEMENT, LLC; DAVID SAXE;
21 DOES I through X, inclusive; and ROE
22 CORPORATIONS I through X, inclusive,

23 Defendants.

24 **SUMMONS - CIVIL**

25 **NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**
26 **WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.**
27 **READ THE INFORMATION BELOW.**

28 **V THEATER GROUP, LLC**

TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against
you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served
on you, exclusive of the day of service, you must do the following:

(a) File with the Clerk of this Court, whose address is shown below, a formal
written response to the Complaint in accordance with the rules of the
Court, with the appropriate filing fee.

EXHIBIT A

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1 (b) Serve a copy of your response upon the attorney whose name and address
2 is shown below.

3 2. Unless you respond, your default will be entered upon application of the
4 Plaintiff(s) and failure to so respond will result in a judgment of default against
5 you for the relief demanded in the Complaint, which could result in the taking of
6 money or property or other relief requested in the Complaint.

7 3. If you intend to seek the advice of an attorney in this matter, you should do so
8 promptly so that your response may be filed on time.

9 4. The State of Nevada, its political subdivisions, agencies, officers, employees,
10 board members, commission members and legislators each have 45 days after
11 service of this Summons within which to file an Answer or other responsive
12 pleading to the Complaint.

13 STEVEN D. GRIERSON
14 CLERK OF COURT

15 By: Wendy V. Vaquero
16 Deputy Clerk
17 Regional Justice Center
18 200 Lewis Avenue
Las Vegas, NV 89155

Date

U. 11. 14

LISAMARIE VAQUERO

19 Issued at the direction of:

20 MARQUIS AURBACH COFFING

21 By: Candice E. Renka

22 Phillip S. Aurbach, Esq.
23 Nevada Bar No. 1501
24 Candice E. Renka, Esq.
25 Nevada Bar No. 11447
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Plaintiffs

CIVIL COVER SHEET

A-14-702332-C

XIV

Clark County, Nevada

Case No.

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone):

JEREMY BAUMAN

Attorney (name/address/phone):

Phillip S. Aurbach, Esq. (NV Bar No. 1501)
 Marquis Aurbach Coffing
 10001 Park Run Drive
 Las Vegas, NV 89145
 (702) 382-0711

Defendant(s) (name/address/phone):

V THEATER GROUP, LLC; SAXE MANAGEMENT, LLC;
 DAVID SAXE; DOES I through X, inclusive; and ROE
 CORPORATIONS I through X, inclusive

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases****Real Property**

- ☐ Landlord/Tenant
☐ Unlawful Detainer
☐ Title to Property
☐ Foreclosure
☐ Liens
☐ Quiet Title
☐ Specific Performance
☐ Condemnation/Eminent Domain
☐ Other Real Property
☐ Partition
☐ Planning/Zoning

Negligence

- ☐ Negligence - Auto
☐ Negligence - Medical/Dental
☐ Negligence - Premises Liability
 (Slip/Fall)
☐ Negligence - Other

Torts

- ☐ Product Liability
☐ Product Liability/Motor Vehicle
☐ Other Torts/Product Liability
☐ Intentional Misconduct
☐ Torts/Defamation (Libel/Slander)
☐ Interfere with Contract Rights
☐ Employment Torts (Wrongful termination)
☐ Other Torts
☐ Anti-trust
☐ Fraud/Misrepresentation
☐ Insurance
☐ Legal Tort
☐ Unfair Competition

Probate

Estimated Estate Value: _____

- ☐ Summary Administration
☐ General Administration
☐ Special Administration
☐ Set Aside Estates
☐ Trust/Conservatorships
☐ Individual Trustee
☐ Corporate Trustee
☐ Other Probate

Other Civil Filing Types

- ☐ Construction Defect
☐ Chapter 40
☐ General
☐ Breach of Contract
☐ Building & Construction
☐ Insurance Carrier
☐ Commercial Instrument
☐ Other Contracts/Act/Judgment
☐ Collection of Actions
☐ Employment Contract
☐ Guarantee
☐ Sale Contract
☐ Uniform Commercial Code
☐ Civil Petition for Judicial Review
☐ Foreclosure Mediation
☐ Other Administrative Law
☐ Department of Motor Vehicles
☐ Worker's Compensation Appeal
☐ Appeal from Lower Court (also check applicable civil case box)
☐ Transfer from Justice Court
☐ Justice Court Civil Appeal
☐ Civil Writ
☒ Other Special Proceeding
☒ Other Civil Filing
☐ Compromise of Minor's Claim
☐ Conversion of Property
☐ Damage to Property
☐ Employment Security
☐ Enforcement of Judgment
☐ Foreign Judgment - Civil
☐ Other Personal Property
☐ Recovery of Property
☐ Stockholder Suit
☒ Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- ☐ NRS Chapters 78-88
☐ Commodities (NRS 90)
☐ Securities (NRS 90)
☐ Investments (NRS 104 Art. 8)
☐ Deceptive Trade Practices (NRS 598)
☐ Trademarks (NRS 600A)
☐ Enhanced Case Mgmt/Business
☐ Other Business Court Matters

6/12/14

Date

Andree C. Lonka
 Signature of initiating party or representative

Electronically Filed
06/12/2014 10:22:00 AM



CLERK OF THE COURT

1 Marquis Aurbach Coffing
2 PHILLIP S. AURBACH, ESQ.
3 Nevada Bar No. 1501
4 CANDICE E. RENKA, ESQ.
5 Nevada Bar No. 11774
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12 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JEREMY BAUMAN, individually and on behalf
of all persons similarly situated,

Plaintiffs,

vs.

V THEATER GROUP, LLC; SAXE
MANAGEMENT, LLC; DAVID SAXE;
DOES I through X, inclusive; and ROE
CORPORATIONS I through X, inclusive,
Defendants.

Case No.: A-14-702332-C

Dept. No.: XIV

CLASS ACTION COMPLAINT

EXEMPT FROM ARBITRATION:
Class Action
Injunctive Relief Sought

Plaintiff JEREMY BAUMAN ("Plaintiff") brings this class action on behalf of himself and all similarly situated persons (collectively "Plaintiffs"). This class action is filed against Defendants V THEATER GROUP, LLC; SAXE MANAGEMENT, LLC; DAVID SAXE; DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive. All of these Defendants are referenced in this complaint collectively as "Defendants".

NATURE OF THE ACTION

1. This is a proposed class action brought on behalf of persons that were sent text message advertisements by Defendants.

2. Plaintiffs allege that Defendants used an automated telephone dialing system ("ATDS") to send text message advertisements to Plaintiffs in violation of the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. § 227, and the Nevada Deceptive Trade

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1 Practices Act, ("NVDTPA"), NRS Chapter 598. Moreover, a violation of the TCPA is a *per se*
2 violation of the NVDTPA. NRS 598.023(3).

3 3. Plaintiff brings this action in his individual capacity and on behalf of the classes
4 of persons similarly situated as defined below.

5 THE PARTIES

6 4. Plaintiff is an individual person and consumer who resides in King County,
7 Washington.

8 5. Plaintiff brings this action on behalf of himself and all persons similarly situated.

9 6. Upon information and belief, Defendant V THEATER GROUP, LLC is and was
10 at all relevant times a domestic entity domiciled and doing business in Clark County, Nevada.

11 7. Upon information and belief, Defendant SAXE MANAGEMENT, LLC is and
12 was at all relevant times a domestic entity domiciled and doing business in Clark County,
13 Nevada.

14 8. Upon information and belief, Plaintiff alleges that Defendant DAVID SAXE is
15 and was at all relevant times an individual domiciled and doing business in Clark County,
16 Nevada.

17 9. The true names and capacities, whether individual, corporation, associate, or
18 otherwise of the Defendants named herein as ROE Corporations I through X and DOES I
19 through X, inclusive, are unknown to Plaintiff at this time. Plaintiff sues these Defendants by
20 fictitious names and will ask leave of the court to amend this Complaint to show the true names
21 and capacities of Defendants when they are identified.

22 10. Defendants are sued as principals or else agents of the principal Defendants.
23 Based upon information and belief, Plaintiff alleges that all of the acts performed by agent
24 defendants were performed within the course and scope of the actual or ostensible authority of
25 the principal defendants, and the principal defendants ratified all of the acts of their agents.

26 11. Based upon information and belief, Plaintiff alleges that each of the Defendants is
27 legally responsible in some manner for the events and happenings referred to in this complaint
28

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1 and directly and proximately caused the damages and injuries to Plaintiff alleged in this
2 complaint.

3 12. Based upon information and belief, Plaintiff alleges that each of the Defendants
4 had the right and ability to control all of the illegal conduct alleged in this complaint. Without
5 the participation, authorization, approval, or ratification by each of the Defendants, the illegal
6 conduct that is the subject matter of this complaint would not have occurred.

7 JURISDICTION AND VENUE

8 13. Nevada state courts have general jurisdiction over claims arising under the TCPA.
9 Edwards v. Direct Access, LLC, 121 Nev. 929, 932, 124 P.3d 1158, 1160 (2005).

10 14. Even if the damages under the TCPA do not meet the district court's jurisdictional
11 threshold, if the plaintiff seeks injunctive relief, the injunctive relief claim triggers the district
12 court's original jurisdiction over all claims. Edwards v. Emperor's Garden Restaurant, 122
13 Nev. 317, 324, 130 P.3d 1280, 1284 (2006).

14 15. Venue is proper in the Eighth Judicial District Court, Clark County, Nevada
15 because Defendants conducted business in Clark County by sending Plaintiff unsolicited text
16 messages, which were received by Plaintiff while in Clark County, Nevada.

17 FACTUAL ALLEGATIONS

18 16. Receiving a text message is a uniquely personal event. Each text message sent to
19 a cellular telephone number delivers a message literally into the hands of the intended recipient.
20 And telemarketers have found the potency of text messages to be irresistible. With the push of a
21 single button, modern computers can deliver customized text messages directly to the cellular
22 telephones of millions of consumers. To telemarketers, this is a powerful and efficient method
23 of advertising, as most of the cost can be shifted to cellular telephone subscribers, all of whom
24 must pay some form of fee to receive text messages. And the message can be assured of being
25 seen by consumers because text messages generally remain on a cellular telephone until the
26 consumer looks at the text message and takes affirmative steps to delete it. No other form of
27 advertisement can duplicate the ability of text messages to deliver advertisements into the hands
28 of consumers. For this reason, text message advertisements sent without prior express consent

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1 can be a violation of consumers' privacy. This is why federal and state law restricts the use of
2 automated telephone dialing equipment to transmit uninvited text messages.

3 17. In April 2014, Defendants sent multiple text messages to the cellular telephone
4 number of Plaintiff.

5 18. Plaintiff received at least three of these text messages.

6 19. On or about April 15, 2014, Defendants sent a text message to Plaintiff's cellular
7 telephone number that stated,

8 You are seeing Comedy
9 Pet Theater tonight! Add
10 VIP Seating or Dinner to
your show by calling
1-866-932-1818.

11 20. While in Nevada, Plaintiff received this text message on his cellular telephone on
12 or about April 15, 2014.

13 21. On or about April 15, 2014, Defendants sent a text message to Plaintiff's cellular
14 telephone number that stated,

15 We hope you enjoyed
16 Comedy Pet Theater. See
another show for 50% off,
17 USE PROMOCODE --
EMAILDEAL upon
18 Checkout at
www.vtheaterboxoffice.com

19 22. While in Nevada, Plaintiff received this text message on his cellular telephone on
20 or about April 15, 2014.

21 23. On or about April 16, 2014, Defendants sent a text message to Plaintiff's cellular
22 telephone number that stated,

23 Exclusive Deal! See Vegas!
24 The Show for only \$40.
25 Call 1-866-932-1818 ask
for the inclusive Email/Text
\$40 Vegas Deal

26 24. While in Nevada, Plaintiff received this text message on his cellular telephone on
27 or about April 16, 2014.
28

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1 25. Each of these text messages promoted the sale of goods or services of one or more
2 Defendants to Plaintiff.

3 26. Each of these text messages were advertisements that were transmitted directly
4 from Defendants' transmission equipment to Plaintiff's cellular telephone.

5 27. These text messages and other similar text messages were sent by Defendants to
6 numerous consumers.

7 28. Defendants sent numerous promotional text messages to consumers.

8 29. In order to send so many text messages to Plaintiff and consumers like him,
9 Defendants had to employ automated telephone dialing equipment as defined by the TCPA.

10 30. The transmission equipment used by Defendants to send text messages to Plaintiff
11 and other consumers had the capacity to store lists of telephone numbers and to dial telephone
12 numbers from such lists in an automated manner.

13 31. The text message advertisements sent by Defendants would not have been cost-
14 effective for Defendants to send if Defendants had employed humans to draft each text message
15 and to dial the telephone number of Plaintiff or other consumers to whom Defendants sent their
16 promotional text messages.

17 32. Defendants did not have any prior consent from Plaintiff to send him these or any
18 other text messages on his cellular telephone.

19 33. Defendants did not obtain prior express consent from anyone to whom they sent
20 text message advertisements.

21 34. Defendants' transmission of text message advertisements to Plaintiff's cellular
22 telephone violated Plaintiff's privacy and injured Plaintiff in his quiet use and enjoyment of his
23 cellular telephone.

24 35. All of Defendants' text message transmissions were initiated or otherwise
25 facilitated in Nevada by the Defendants.

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CLASS ALLEGATIONS

36. Plaintiff brings this class action on behalf of himself and as representative of the following class of persons (the "Class") entitled to injunctive relief or declaratory relief under federal or state law:

All persons who reside in the United States or its territories and whose cellular telephone numbers are in the possession, custody, or control of a Defendant.

37. The Class includes numerous persons, *i.e.*, Class Members.

38. Plaintiff brings this class action on behalf of himself and as representative of the following class of persons (the "Subclass") entitled to injunctive relief, declaratory relief, and incidental statutory damages under federal and state law:

All persons who reside in the United States or its territories and whose cellular telephone numbers were sent a telemarketing text message by a Defendant.

39. The Subclass includes numerous persons, *i.e.*, Subclass Members.

40. Plaintiffs' claims satisfy the numerosity, commonality, typicality, adequacy of representation and superiority requirements for class action certification pursuant to NRCP 23 as referenced in this complaint and in accord with proof.

41. Defendant possesses personal data, including names and contact information, for Class Members.

42. Defendant possesses personal data, including names and contact information, for Subclass Members.

43. Joinder of the numerous Plaintiffs in to an action is impracticable. In fact, given the number of Plaintiffs, the only way to deliver substantial justice to all members of the Plaintiffs is by means of a single class action.

44. There are questions of fact and law common to Plaintiffs. These common questions predominate over any questions affecting only individual members. The questions of law and fact common to the class arising from Defendants' conduct include, without limitation, the following:

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1 a. Does giving a cellular telephone number to a business constitute prior
2 express consent for that business to send text message advertisements to that cellular
3 telephone number?

4 b. Did Defendants use an ATDS to send their text messages to Class
5 Members or Subclass Members?

6 c. Are the text messages sent by Defendants telemarketing?

7 d. Do Defendants negligently, knowingly, and/or willfully cause violations
8 of federal or state law by sending their text messages to Class Members or Subclass
9 Members?

10 e. What are the statutory damages that Defendants must pay for each of the
11 uninvited text messages sent to the Class Members or Subclass Members?

12 f. Are Class Members or Subclass Members entitled to collect pre-judgment
13 interest on the incidental statutory damages which are now due from Defendants?

14 g. Are any of the Defendants vicariously liable under any theory of vicarious
15 liable for illegal actions of any other Defendant alleged in this complaint?

16 45. The questions referenced above, and other questions like them, predominate over
17 any questions affecting only individual persons, and a class action is superior with respect to
18 considerations of consistency, economy, efficiency, fairness and equity, to other available
19 methods for the fair and efficient adjudication of claims of all Class Members and Subclass
20 Members.

21 46. Plaintiff's claims are typical of those of the other Plaintiffs in that Defendants
22 have his cellular telephone number and that he was injured by the same sending of unsolicited
23 text messages by Defendants' ATDS, which has injured or else will injure other Plaintiffs. The
24 text messages which Plaintiff received in April 2014 are typical of the text messages that
25 Defendants have sent and continue to send to other Plaintiffs.

26 47. A class action is the appropriate method for the fair and efficient adjudication of
27 this controversy. Defendants have acted in a general manner as part of a systemic process to the
28 injury and damage of Plaintiffs. Defendants continue this same conduct which puts other

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1 Plaintiffs at undue risk of injury in the future. The presentation of separate actions by individual
2 Plaintiffs could create a risk of inconsistent and varying adjudications, establish incompatible
3 standards of conduct for Defendants or substantially impair or impede the ability of Class
4 Members and Subclass Members to protect their interests.

5 48. Plaintiff is an adequate representative of Plaintiffs because he is a member of the
6 Class and Subclass and his interests do not conflict with the interests of Class Members or
7 Subclass Members he seeks to represent. The interests of Plaintiffs will be fairly and adequately
8 protected by Plaintiff. Also, Plaintiff is represented by counsel with significant experience
9 representing clients in complex class action litigation.

10 49. Maintenance of this action as a class action is a fair and efficient method for the
11 adjudication of this controversy. It would be impractical and undesirable for each of the
12 numerous persons who comprise the Class or Subclass to bring separate actions. The
13 maintenance of such separate actions would place a substantial and unnecessary burden on the
14 courts and could result in inconsistent adjudications, while a single class action can determine,
15 with judicial economy, the rights of all Class Members and Subclass Members. Defendants have
16 records which should help the Court determine the identity of all Class Members and Subclass
17 Members and how much in incidental statutory damages each of them are entitled to recover
18 from Defendants.

19 50. If this action is not certified as a class action, then given the number of Class
20 Members and Subclass Members, the only way that the court system will not be overburdened by
21 a multiplicity of suits over the subject matter of this complaint is if members of the Class or
22 Subclass cannot or do not pursue an action against Defendants for reasons altogether unrelated to
23 the merits of their claims (*e.g.*, challenges in accessing legal counsel, the mundane realities of
24 surviving in a challenging economy, *et cetera*). Most Class Members and Subclass Members can
25 obtain legal representation for their claims only through a class action. The only practical way to
26 ensure that all members of the class are afforded an opportunity to obtain substantial justice with
27 regard to the wrongs and injuries to which Defendants have inflicted or else will inflict upon
28 them is to resolve the subject matter of this complaint through a class action.

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FIRST CLAIM FOR RELIEF

(Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227)

51. Plaintiffs repeat, re-allege and incorporate by reference each and every allegation contained above, inclusive, as if fully set forth herein.

52. At all times material herein, Plaintiffs have been entitled to the rights, protections, and benefits provided under the TCPA, 47 U.S.C. § 227.

53. Negligently, knowingly, and/or willfully, Defendants engaged in acts, omissions, or other conduct as referenced herein this complaint that violates the TCPA. Defendants used an ATDS to initiate thousands of unsolicited telephone calls to Plaintiffs' cellular telephone numbers. These telephone calls delivered unsolicited commercial text messages to the cellular telephones of Representative Plaintiff and the other Plaintiffs as referenced in this complaint.

54. Plaintiffs are entitled to recover \$500 in damages from Defendant for each violation of the TCPA and treble damages for each knowing or willful violation of the TCPA.

55. Additionally, Plaintiffs are entitled to all damages referenced herein and in accord with proof, attorneys' fees, costs, treble damages, and other remedies allowed by statute.

56. Defendants will continue their unlawful conduct in the future absent (a) a judicial declaration which clearly states the illegality of their conduct and (b) an injunction barring Defendants from engaging in such illegal conduct in the future.

SECOND CLAIM FOR RELIEF

(Violations of the Nevada Deceptive Trade Practices Act, NRS Chapter 598)

57. Plaintiffs repeat, re-allege and incorporate by reference each and every allegation contained above, inclusive, as if fully set forth herein.

58. Defendants, during the course of their business or occupation, knowingly violated the TCPA, which is a statute relating to the sale or lease of goods or services. NRS 41.600; NRS 598.0923(3).

59. Defendants engaged in a deceptive and otherwise unlawful trade practice.

60. As a direct and proximate result of Defendants' deceptive and illegal trade practice, Plaintiffs have suffered damages in an amount to be proven at trial.

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1 7. A Declaration that that the equipment used by Defendants to send text messages
2 to Plaintiffs was an automated telephone dialing system as defined by the TCPA;

3 8. A Declaration that Defendants violated the privacy of Plaintiffs by sending the
4 subject text messages;

5 9. A Declaration that Defendants' transmission of the subject text messages
6 impaired the quiet use and enjoyment by Plaintiffs of their cellular telephones;

7 10. A Declaration that Defendants committed an unlawful trade practice under NRS
8 Chapter 598 by sending the subject text messages to Plaintiffs;

9 11. A Declaration that each of the Defendants is liable for the unlawful acts alleged in
10 this complaint;

11 12. A Declaration that the Defendants willfully of violated federal and state law by
12 sending the subject text messages to Plaintiffs;

13 13. A reasonable incentive award for Plaintiff in accord with the Court's assessment
14 of Plaintiff's contributions in advancing the interests of the Class Members;

15 14. Judgment for fees and costs incurred in connection with this action, including
16 reasonable attorney fees, expert witness fees, and other costs, as provided by law; and

17 15. Granting such other and further relief as the Court deems just and proper.

18 Dated this 12th day of June 2014.

19
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22 By /s/ Candice E. Renka, Esq.
23 Phillip S. Aurbach, Esq.
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Attorneys for Plaintiffs

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CLARK COUNTY, NEVADA

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Plaintiffs,

vs.

15 V THEATER GROUP, LLC; SAXE
 16 MANAGEMENT, LLC; DAVID SAXE;
 17 DOES I through X, inclusive; and ROE
 18 CORPORATIONS I through X, inclusive,

Defendants.

INITIAL APPEARANCE FEE DISCLOSURE

19 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
 20 parties appearing in the above-entitled action as indicated below:

21 JEREMY BAUMAN \$270.00
 22
 23 **TOTAL REMITTED**..... **\$270.00**

24 Dated this 12th day of June, 2014.

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 26 Phillip S. Aurbach, Esq.
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 Attorney(s) for Plaintiffs

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8 DISTRICT COURT

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MANAGEMENT, LLC; DAVID SAXE;
14 DOES I through X, inclusive; and ROE
CORPORATIONS I through X, inclusive,

15 Defendants.

16 NRCP RULE 7.1 DISCLOSURE STATEMENT

17 The undersigned counsel of record certifies that the following are persons and entities as
18 described in NRCP 7.1, and must be disclosed. These representations are made in order that the
19 judges of this court may evaluate possible disqualification or recusal.

20 1. Jeremy Bauman is an individual.

21 Dated this 12th day of June, 2014.

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23
24
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Phillip S. Aurbach, Esq.
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28 Attorney(s) for Plaintiffs

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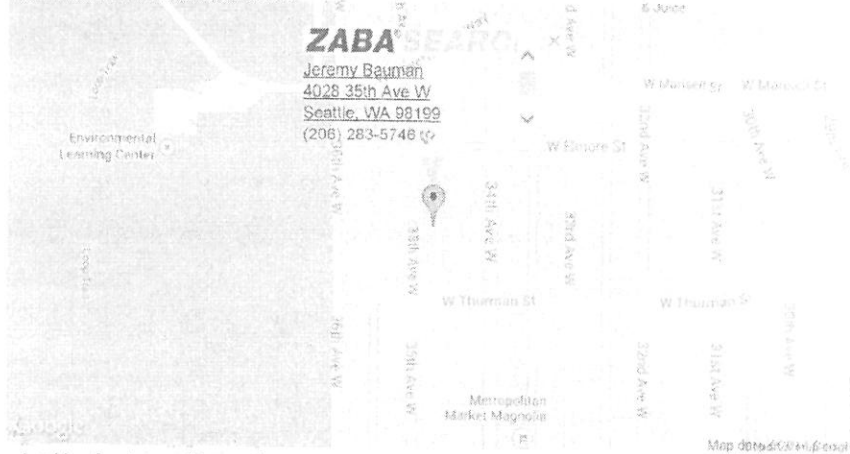
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